STATE OF MICHIGAN

COURT OF APPEALS

STERLING BANK & TRUST, F.S.B., Plaintiff-Appellant,	UNPUBLISHED August 23, 2005
V	No. 249689 Oakland Circuit Court
CITY OF PONTIAC, Defendant-Appellee.	LC No. 2002-042097-CZ

Before: Wilder, P.J., and Sawyer and White, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant's motion for summary disposition under MCR 2.116(C)(10). We affirm.

Upon investigation by its building and safety engineer inspector, defendant determined that a building owned by plaintiff was open to trespass and the elements, and that there was trash and junk on the property. Further investigation revealed that a building permit issued pertaining to the property had expired three months earlier. Thus, pursuant to and in compliance with MCL 125.540(5),[1] defendant sent to plaintiff by certified mail a notice that there was a pending hearing to determine whether the building at issue could be lawfully demolished as a "dangerous building." The notice was mailed to Todd Lynn Shull, c/o Sterling Savings Bank, P.O. Box 578, Ortonville, MI 48462, the owner(s) as indicated on the tax assessor's rolls. In further compliance with MCL 125.540(5), defendant also posted a notice of dangerous and unsafe building on the property premises. Plaintiff did not appear at the scheduled hearing, and the hearing officer determined that the building should be repaired and made safe within 30 days or the building

[1] MCL 125.540(5) provides in pertinent part:

> *The notice* shall be in writing and *shall be served* upon the person to whom the notice is directed either personally or *by certified mail*, return receipt requested,
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> *records*. If a notice is served on a person by certified mail, a copy of the notice shall also be posted upon a conspicuous part of the building or structure. The
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> the date of the hearing included in the notice. [Emphasis added].

should be demolished. After 30 days had passed, notice to show cause why the building should not be made safe or demolished was provided by certified mail and posted, again in compliance with the statute. Again, plaintiff did not appear at the hearing, and the Pontiac City Council determined that the building should be demolished. The structure was subsequently demolished.

Plaintiff brought this action alleging an unconstitutional taking of its property after defendant demolished a home on the property. Plaintiff's assertion that there was an unconstitutional taking primarily rests on the fact that it did not receive actual notice of the pending demolition of the building despite its status as the owner of the property with a recorded interest. Plaintiff also contends that defendant's failure to provide it with actual notice before the building was demolished was a violation of procedural due process. We disagree.

In *Smith v Cliffs on the Bay Condo Ass'n*, 463 Mich 420, 422-431; 617 NW2d 536 (2000) (*Smith II*), Ypsilanti Township sent notice of a pending tax sale to the property owner, a condominium association. There was no dispute that the notice sent to the association by the township was in compliance with the notice procedures established by the Legislature in the General Property Tax Act, MCL § 211.1 *et seq*. *Id*. at 429-430. There was also no dispute that the association had changed its address on file with the State of Michigan Corporations and Securities Bureau to an address different than the address on file with the township, and that because there was apparently no requirement that the association change its address on file with the township, it did not do so. *Id*. at 423. It was further undisputed that the notice to the association in fact went to the address that was on record with the township. *Id*. at 424. The association did not receive actual notice of the pending tax sale, and the tax sale proceeded as scheduled. *Id.* In reversing the holding of this Court[2] that the failure to provide actual notice to the association in advance of the sale was a violation of due process, our Supreme Court concluded that because the statute, providing that mailed notice of a tax sale is to be made to the owner's last known address, was fully complied with by the township when it mailed notice to the former address of the association, the notice was appropriate and sufficient to meet constitutional standards. *Id*. at 429-430.

The Supreme Court noted in *Smith II* that *Dow v Michigan*, 396 Mich 192; 240 NW2d 450 (1976), was inappropriately relied on by this Court in *Smith I* for the proposition that the state must use 'such means "as one desirous of actually informing [the property owner] might reasonably adopt" to notify the owner of the pendency of the proceedings.' *Smith II*, *supra* at 425 (brackets in original). In *Dow*, the issue before the Supreme Court was whether notice by publication was sufficient, when notice by mail was authorized by the statute in effect at the time and the record showed no effort by the state to provide notice to the property owner by mail. *Dow*, *supra* at 207. In *Smith II*, however, the township had availed itself of the notice by mail provision of the statute by mailing notice to the association at its last known address, and the Supreme Court concluded that this notice to the association was constitutionally sufficient even if the association did not actually receive notice. *Smith II*, *supra* at 429. Importantly, the

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[2] *Smith v Cliffs on the Bay Condo Ass'n*, 226 Mich App 245; 573 NW2d 296 (1997) (*Smith I*), vacated 459 Mich 925 (1998).

Supreme Court concluded that contrary to the finding of this Court in *Smith I*, the fact that the one of the mailings to the association was returned as undeliverable did not impose on the township "the obligation to undertake an investigation to see if a new address for the association could be located" because "[t]he courts lack the authority to create new notice requirements." *Id*. at 429-430. Rather, "[f]or due process purposes, the focus must be on the constitutional adequacy of the statutory procedure and not on whether some additional effort in a particular case would have led to a more certain means of notice." *Id*. at 431.

More recently, in *Republic Bank v Genesee County Treasurer*, 471 Mich 732, 740-741; 690 NW2d 917 (2005), the Supreme Court reaffirmed its holding in *Smith II* and concluded that "when an address has been provided on the relevant document and that document address has not been changed," the mailing of notice of tax foreclosure proceedings to the address provided by the document satisfies due process concerns, even if the municipality might be able to find an updated address upon further investigation.

In the present case, the defendant indisputably complied with MCL 125.540(5) by sending notice, to the address of the interested parties last on file with the township, of the pending hearing to determine whether the home at issue could be lawfully demolished as a "dangerous building." The fact that plaintiff did not receive actual notice is insufficient by itself to demonstrate that the statutory procedures for providing notice were inadequate or constitutionally insufficient, and plaintiff makes no other showing why the notice provided under the statute violated its due process rights. We therefore reject plaintiff's effort to have this Court impose on defendant "the obligation to undertake an investigation to see if a new address for the [plaintiff] could be located,"[3] *Smith II*, *supra* at 429, before it acts to demolish a structure under the statute.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Helene N. White

[3] Presumably, defendant would have to conduct this investigation by examining the recorded interests on file with the register of deeds.